

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 316

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO REAL ESTATE; PROHIBITING CERTAIN HOME LOANS;
AMENDING THE HOME LOAN PROTECTION ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-21A-1 NMSA 1978 (being Laws 2003,
Chapter 436, Section 1) is amended to read:

"58-21A-1. SHORT TITLE.--~~[Sections 1 through 14 of this
act]~~ Chapter 58, Article 21A NMSA 1978 may be cited as the
"Home Loan Protection Act"."

Section 2. Section 58-21A-3 NMSA 1978 (being Laws 2003,
Chapter 436, Section 3) is amended to read:

"58-21A-3. DEFINITIONS.--As used in the Home Loan
Protection Act:

A. "adjustable rate home loan" means a home loan
that has an initial interest rate that adjusts to a variable

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1 interest rate at the end of a specified initial period or
2 subsequent periods of time during the remaining term of the
3 home loan;

4 [A.] B. "affiliate" means a person that controls,
5 is controlled by or is under common control with another
6 person;

7 [B.] C. "bona fide discount points" means loan
8 discount points that are knowingly paid by the borrower for the
9 express purpose of reducing, and which in fact do result in a
10 bona fide reduction of, the annual percentage rate otherwise
11 applicable to the home loan; provided, however, that discount
12 points are not "bona fide discount points" if the annual
13 percentage rate otherwise applicable to the home loan exceeds
14 the conventional mortgage rate by more than:

15 (1) one and one-half percentage points for a
16 home loan secured by a first lien; or

17 (2) three percentage points for a home loan
18 secured by a junior lien;

19 [C.] D. "borrower" means a natural person obligated
20 to repay a home loan, including a co-borrower, cosigner or
21 guarantor;

22 [D.] E. "bridge loan" means a loan for the initial
23 construction of a borrower's principal dwelling on land owned
24 by the borrower with a maturity of less than eighteen months
25 that only requires the payment of interest until the entire

1 unpaid balance is due and payable;

2 [E-] F. "conventional mortgage rate" means the most
 3 recently published annual yield on conventional mortgages
 4 published by the board of governors of the federal reserve
 5 system as of the fifteenth day of the month immediately
 6 preceding the month in which the application for the extension
 7 of credit is received by the creditor;

8 [F-] G. "conventional prepayment penalty" means a
 9 prepayment penalty or fee that may be collected in a home loan
 10 and that is authorized by federal law; provided that a
 11 prepayment penalty is not a "conventional prepayment penalty"
 12 if the home loan:

13 (1) has an annual percentage rate that exceeds
 14 the conventional mortgage rate by more than two percent; or

15 (2) permits prepayment fees or penalties that
 16 exceed two percent of the amount prepaid;

17 [G-] H. "creditor" means a person who regularly
 18 offers or makes a home loan [~~and includes a loan broker~~];

19 [H-] I. "high-cost home loan" means a home loan in
 20 which:

21 (1) the contract rate exceeds the rates
 22 threshold; or

23 (2) the total points and fees exceed the total
 24 points and fees threshold;

25 [I-] J. "home loan" means a loan, including an

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1 open-end credit plan, other than a reverse mortgage transaction
2 or a bridge loan, where the principal amount does not exceed
3 the conforming loan size limit for a single-family dwelling as
4 established by the federal national mortgage association and
5 where the loan is secured by:

6 (1) a mortgage or deed of trust on real estate
7 in this state upon which there is located or there is to be
8 located a structure:

9 (a) designed principally for occupancy
10 by one to four families; and

11 (b) that is or will be occupied by a
12 borrower as the borrower's principal residence; or

13 (2) a security interest on a manufactured home
14 that is or will be occupied by a borrower as the borrower's
15 principal residence;

16 [~~J.~~] K. "manufactured home" means a structure,
17 transportable in one or more sections, which in the traveling
18 mode is eight body feet or more in width or forty body feet or
19 more in length or, when erected on site is three hundred twenty
20 or more square feet and which is built on a permanent chassis
21 and designed to be used as a dwelling with a permanent
22 foundation when erected on land secured in conjunction with the
23 real property on which the manufactured home is located and
24 connected to the required utilities and includes the plumbing,
25 heating, air conditioning and electrical systems contained

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1 therein. "Manufactured home" includes any structure that meets
 2 all the requirements of this subsection except the size
 3 requirements and with respect to which the manufacturer
 4 voluntarily files a certification required by the secretary of
 5 the United States department of housing and urban development
 6 and complies with the standards established under the federal
 7 National Manufactured Housing Construction and Safety Standards
 8 Act of 1974. "Manufactured home" does not include rental
 9 property or second homes or manufactured homes when not secured
 10 in conjunction with the real property on which the manufactured
 11 home is located;

12 L. "open-end loan" means a revolving debt that is
 13 secured by the equity in the borrower's home, including a home
 14 equity line of credit;

15 ~~[K.]~~ M. "points and fees" means:

16 (1) all amounts payable by a borrower at or
 17 before the closing of a home loan, exclusive of any time-price
 18 differential due at closing on the loan proceeds, including:

- 19 (a) loan discount points or other
 20 discounts;
 21 (b) loan fees, ~~[finder's]~~ broker fees or
 22 similar charges; and
 23 (c) fees for preparation of loan-related
 24 documents; but
 25 (d) does not include fees for the

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1 following purposes, if the amounts are bona fide and reasonable
2 and paid to a person other than the creditor or an affiliate of
3 the creditor: 1) service or carrying charges; 2) credit
4 reports; 3) title exam, title insurance, title closing or
5 similar purposes; 4) escrow charges for future payments of
6 taxes and insurance; 5) fees for notarizing deeds and other
7 documents; 6) appraisals, including fees related to any pest
8 infestation or flood hazard inspections conducted prior to
9 closing; 7) inspection performed prior to closing; 8) attorney
10 fees, if the borrower has the right to select the attorney from
11 an approved list or otherwise; 9) fire and hazard insurance and
12 flood insurance premiums if the conditions in 12 C.F.R.
13 s.226.4(d)(2) are met; 10) tax payment services; 11) surveys;
14 12) flood certification; ~~and~~ 13) pest infestation and flood
15 determination; and 14) federal housing administration upfront
16 mortgage insurance, veterans administration funding, guaranteed
17 rural housing loan guarantee or upfront premium private
18 mortgage insurance at a percentage rate, as set by the director
19 biannually, equal to the highest up-front government mortgage
20 insurance percentage rate or United States department of
21 veterans affairs funding fee percentage rate;

22 (2) all compensation, including yield spread
23 premiums, paid directly or indirectly to a mortgage broker,
24 including a broker that originates a loan in its own name in a
25 table-funded transaction;

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1 ~~[(3) the maximum prepayment fees and penalties~~
 2 ~~that may be charged or collected under the terms of the loan~~
 3 ~~documents;~~

4 ~~(4) all prepayment fees or penalties that are~~
 5 ~~incurred by the borrower if the loan refinances a previous loan~~
 6 ~~made or currently held by the same creditor or an affiliate of~~
 7 ~~the creditor;~~

8 ~~(5)]~~ (3) the cost of all premiums financed by
 9 the creditor, directly or indirectly, for any credit life,
 10 credit disability, credit unemployment or credit property
 11 insurance, or any other life or health insurance, or any
 12 payments financed by the creditor, directly or indirectly, for
 13 any debt cancellation or suspension agreement or contract,
 14 except that insurance premiums calculated and paid on a monthly
 15 basis shall not be considered financed by the creditor; and

16 ~~[(6)]~~ (4) for open-end loans, the points and
 17 fees included in Paragraphs (1) through ~~[(5)]~~ (3) of this
 18 subsection that are known at or before closing plus the minimum
 19 additional fees the borrower would be required to pay to draw
 20 down an amount equal to the total credit line;

21 ~~[E.]~~ N. "rate threshold" means:

22 (1) for a first lien mortgage home loan, an
 23 interest rate equal to seven percentage points over the ~~[weekly~~
 24 ~~average]~~ yield on ~~[comparable United States]~~ treasury
 25 securities ~~[on]~~ having comparable periods of maturity to the

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1 loan maturity as of the fifteenth day of the month immediately
2 preceding the month in which the loan is made; and

3 (2) for a subordinate mortgage lien, an
4 interest rate equal to nine percentage points over the [~~weekly~~
5 ~~average~~] yield on [~~comparable United States~~] treasury
6 securities [~~on~~] having comparable periods of maturity to the
7 loan maturity as of the fifteenth day of the month immediately
8 preceding the month in which the loan is made;

9 [M.] O. "total points and fees" means the result
10 obtained by subtracting the sum of the conventional prepayment
11 penalties and the bona fide discount points paid from the sum
12 of the points and fees, except that if the sum of the
13 conventional prepayment penalties and the bona fide discount
14 points paid exceeds two points, then only the amount that
15 represents two points shall be subtracted; and

16 [N.] P. "total points and fees threshold" means:

17 (1) for a home loan in which the total
18 principal loan amount is twenty thousand dollars (\$20,000) or
19 more, an amount equal to five percent of the total principal
20 loan amount; and

21 (2) for a home loan in which the total
22 principal loan amount is less than twenty thousand dollars
23 (\$20,000), an amount equal to the lesser of one thousand
24 dollars (\$1,000) or eight percent of the total principal loan
25 amount."

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1 Section 3. Section 58-21A-4 NMSA 1978 (being Laws 2003,
2 Chapter 436, Section 4) is amended to read:

3 "58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING
4 HOME LOANS.--

5 A. No creditor shall finance, directly or
6 indirectly, credit life, credit disability, credit unemployment
7 or credit property insurance, or any other life or health
8 insurance, or any payments directly or indirectly for any debt
9 cancellation or suspension agreement or contract, provided that
10 nothing in this subsection prohibits the payment or receipt of
11 insurance premiums or debt cancellation or suspension fees
12 calculated on the unpaid balance of a home loan and paid on a
13 monthly basis [~~or prohibits bona fide credit property insurance~~
14 ~~required by the federal housing administration or the United~~
15 ~~States department of agriculture to be paid in a single premium~~
16 ~~to the respective federal agency. As used in this subsection,~~
17 ~~"credit property insurance" means property insurance written in~~
18 ~~connection with credit transactions under which the creditor is~~
19 ~~the primary beneficiary].~~

20 B. No creditor shall knowingly and intentionally
21 engage in the unfair act or practice of flipping a home loan.
22 As used in this subsection, "flipping a home loan" means the
23 making of a home loan to a borrower that refinances an existing
24 home loan when the new loan does not have reasonable, tangible
25 net benefit to the borrower considering all of the

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1 circumstances, including the terms of both the new and
2 refinanced loans, the cost of the new loan and the borrower's
3 circumstances.

4 C. No creditor shall make a home loan without
5 documenting and considering the borrower's reasonable ability
6 to repay that loan pursuant to its terms. The borrower's
7 ability to repay shall be demonstrated through reasonably
8 reliable documentation that may include payroll receipts, tax
9 returns, bank records, asset and credit evaluations, mortgage
10 payment history or other similar reliable documentation. The
11 provisions of this subsection shall not apply to a home loan
12 originated pursuant to a government streamline program or a
13 streamline program administered by a government-sponsored
14 enterprise, to a reverse mortgage insured as part of a
15 government program or to loss mitigation activities of a home
16 loan servicer or lender with which the borrower has a current
17 relationship, so long as each of these exceptions, as
18 applicable, provides the borrower with a reasonable, tangible
19 net benefit.

20 D. No creditor shall make a home loan without
21 determining the borrower's reasonable ability to pay the costs
22 set forth in this subsection. In the case of an adjustable
23 rate home loan, the reasonable ability to pay shall be
24 determined based on a fully indexed rate and repayment schedule
25 that achieves full amortization over the life of the home loan.

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1 The costs, as applicable, to be used in determining the
2 borrower's reasonable ability to pay include principal,
3 interest, real estate taxes, property insurance, property
4 assessments, mortgage insurance premiums and other scheduled
5 long-term monthly debt payments.

6 E. No creditor shall make or originate an
7 adjustable rate home loan in which caps on payment increases
8 may be less than that necessary to reduce principal and
9 amortize the loan over the entire term of the loan regardless
10 of interest rate adjustments resulting in negative
11 amortization.

12 F. No creditor shall make or originate a home loan
13 that includes terms under which more than two periodic payments
14 required under the loan are consolidated and paid in advance
15 from the loan proceeds provided to the borrower.

16 G. No creditor shall pay a contractor under a
17 home-improvement contract from the proceeds of a home loan
18 unless:

19 (1) the creditor is presented with a signed
20 and dated completion certificate showing that the home
21 improvements have been completed; or

22 (2) the instrument is payable jointly to the
23 borrower and the contractor, or at the election of the
24 borrower, through a third-party escrow agent in accordance with
25 terms established in a written agreement signed by the

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1 borrower, the creditor and the contractor prior to the
2 disbursement.

3 H. No creditor shall charge a borrower any fees or
4 other charges, other than those that are bona fide, reasonable
5 and actual, to modify, renew, extend or amend a home loan.

6 I. No creditor shall charge a borrower more than
7 seventy-five dollars (\$75.00) to defer any payment due under
8 the terms of a home loan.

9 J. No creditor shall recommend or encourage default
10 on an existing loan or other debt prior to and in connection
11 with the closing or planned closing of a home loan that
12 refinances all or any portion of the existing loan or debt.

13 K. No creditor shall make a home loan that provides
14 for a late payment fee except as follows:

15 (1) the late payment fee shall not be in
16 excess of five percent of the amount of the payment past due;

17 (2) the late payment fee shall only be
18 assessed for a payment past due for fifteen days or more;

19 (3) the late payment fee shall not be imposed
20 more than once with respect to a single late payment, and no
21 late payment fee shall be charged with respect to a subsequent
22 payment that would have been a full payment but for the
23 previous default or the imposition of the previous late payment
24 fee;

25 (4) no late payment fee shall be charged

1 unless the creditor notifies the borrower within forty-five
2 days following the date the payment was due that a late payment
3 fee has been imposed for a particular late payment. A late
4 payment fee that the creditor has collected shall be reimbursed
5 if the borrower presents proof of having made a timely payment;
6 and

7 (5) a creditor shall treat each payment as
8 posted on the same business day as it was received by the
9 creditor, servicer, creditor's agent for making payments or at
10 the address provided to the borrower by the creditor, servicer
11 or creditor's agent for making payments.

12 L. No creditor shall make a home loan that contains
13 a provision that permits the creditor, in its sole discretion,
14 to accelerate the indebtedness, provided that this provision
15 does not prohibit acceleration of a loan in good faith due to a
16 borrower's failure to abide by the material terms of the loan.

17 M. No creditor shall make or originate a home loan
18 that contains a provision that requires a penalty or premium
19 for prepayment of the balance or any portion of the principal
20 of the indebtedness.

21 N. No creditor shall make or originate a home loan
22 that includes or uses one or more of the following lending
23 practices:

24 (1) making a home loan primarily based upon
25 the foreclosure or liquidation value of the borrower's

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1 collateral rather than on the borrower's ability to repay the
2 home loan according to its terms;

3 (2) making or originating an adjustable rate
4 home loan, except a home equity line of credit, where the
5 interest rate and payment may change more frequently than
6 annually during the term of the loan;

7 (3) making an adjustable rate home loan,
8 except a home equity line of credit, where:

9 (a) the initial interest rate may be
10 increased by more than two percent for loans with initial
11 periods less than five years and six percent for loans with
12 initial periods greater than or equal to five years;

13 (b) a periodic interest rate may be
14 increased by more than two percent; and

15 (c) a lifetime interest rate cap is more
16 than six percent over the initial rate;

17 (4) advertising terms of home loans, including
18 interest rates, margins, discount points, fees, commissions or
19 other material facts, including limitations on the home loans,
20 unless the creditor is able to make the advertised home loans
21 available to a reasonable number of qualified applicants;

22 (5) misrepresenting a borrower's credit
23 rating;

24 (6) misrepresenting, inflating or fabricating,
25 or encouraging a borrower to misrepresent, inflate or

1 fabricate, the source or amount of a borrower's actual income
 2 or assets, other than allowable grossed-up income not to exceed
 3 the twenty-five percent agency guidelines established by rule
 4 by the director, in the application or underwriting process of
 5 a home loan; and

6 (7) making a home loan with an eighty percent
 7 or higher loan-to-value ratio for an owner-occupied residence
 8 if the creditor has failed to establish an escrow account for
 9 the payment of real estate taxes and property insurance."

10 Section 4. Section 58-21A-5 NMSA 1978 (being Laws 2003,
 11 Chapter 436, Section 5) is amended to read:

12 "58-21A-5. LIMITATIONS AND PROHIBITED PRACTICES FOR HIGH-
 13 COST HOME LOANS.--

14 A. No creditor or mortgage loan originator making a
 15 high-cost home loan shall directly or indirectly finance any
 16 points or fees in excess of two percent of the principal loan
 17 amount.

18 ~~[B. No creditor shall make a high-cost home loan~~
 19 ~~that contains a scheduled payment that is more than twice as~~
 20 ~~large as the average of earlier scheduled payments, provided~~
 21 ~~that this provision does not apply when the payment schedule is~~
 22 ~~adjusted to the seasonal or irregular income of a borrower.~~

23 ~~C. No creditor shall make a high-cost home loan~~
 24 ~~that includes payment terms under which the outstanding~~
 25 ~~principal balance will increase at any time over the course of~~

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1 ~~the loan because the regular periodic payments do not cover the~~
2 ~~full amount of interest due.~~

3 ~~D.]~~ B. No creditor shall make a high-cost home loan
4 that contains a provision that increases the interest rate
5 after default, provided that this provision does not apply to
6 interest rate changes in a variable rate loan otherwise
7 consistent with the provisions of the loan documents if the
8 change in the interest rate is not triggered by the event of
9 default or the acceleration of the indebtedness.

10 ~~[E. No creditor shall make a high-cost home loan~~
11 ~~that includes terms under which more than two periodic payments~~
12 ~~required under the loan are consolidated and paid in advance~~
13 ~~from the loan proceeds provided to the borrower.~~

14 ~~F.]~~ C. Without regard to whether a borrower is
15 acting individually or on behalf of others similarly situated,
16 a provision of a high-cost home loan agreement that allows a
17 party to require a borrower to assert any claim or defense in a
18 forum that is less convenient, more costly or more dilatory for
19 the resolution of a dispute than a judicial forum where the
20 borrower may otherwise properly bring a claim or defense or
21 limits in any way any claim or defense the borrower may have is
22 unconscionable and void.

23 ~~[G. After April 1, 2004]~~ D. No creditor or
24 mortgage loan originator shall make a high-cost home loan
25 without first receiving certification from a third-party

1 nonprofit counselor approved by the United States department of
2 housing and urban development, the New Mexico mortgage finance
3 authority or the director of the financial institutions
4 division of the regulation and licensing department that the
5 borrower has received counseling on the advisability of the
6 loan transaction.

7 ~~[H. No creditor shall make a high-cost home loan~~
8 ~~without due regard to repayment ability. A creditor who~~
9 ~~follows debt-to-income ratios and the residual income~~
10 ~~guidelines established by rule of the financial institution~~
11 ~~division of the regulation and licensing department shall~~
12 ~~benefit from a rebuttable presumption that the creditor made~~
13 ~~the loan with due regard to repayment ability.~~

14 ~~I. No creditor shall pay a contractor under a home-~~
15 ~~improvement contract from the proceeds of a high-cost home loan~~
16 ~~unless:~~

17 ~~(1) the creditor is presented with a signed~~
18 ~~and dated completion certificate showing that the home~~
19 ~~improvements have been completed; and~~

20 ~~(2) the instrument is payable jointly to the~~
21 ~~borrower and the contractor, or, at the election of the~~
22 ~~borrower, through a third-party escrow agent in accordance with~~
23 ~~terms established in a written agreement signed by the~~
24 ~~borrower, the creditor and the contractor prior to the~~
25 ~~disbursement.~~

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1 ~~J. No creditor shall charge a borrower any fees or~~
2 ~~other charges, other than those that are bona fide, reasonable~~
3 ~~and actual, to modify, renew, extend or amend a high-cost home~~
4 ~~loan.~~

5 ~~K. No creditor shall charge a borrower more than~~
6 ~~seventy-five dollars (\$75.00) to defer any payment due under~~
7 ~~the terms of a high-cost home loan.~~

8 ~~L. No creditor shall recommend or encourage default~~
9 ~~on an existing loan or other debt prior to and in connection~~
10 ~~with the closing or planned closing of a high-cost home loan~~
11 ~~that refinances all or any portion of the existing loan or~~
12 ~~debt.~~

13 ~~M. No creditor shall make a high-cost home loan~~
14 ~~that provides for a late payment fee except as follows:~~

15 ~~(1) the late payment fee shall not be in~~
16 ~~excess of five percent of the amount of the payment past due;~~

17 ~~(2) the late payment fee shall only be~~
18 ~~assessed for a payment past due for fifteen days or more;~~

19 ~~(3) the late payment fee shall not be imposed~~
20 ~~more than once with respect to a single late payment and no~~
21 ~~late payment fee shall be charged with respect to a subsequent~~
22 ~~payment that would have been a full payment but for the~~
23 ~~previous default or the imposition of the previous late payment~~
24 ~~fee;~~

25 ~~(4) no late payment fee shall be charged~~

1 ~~unless the creditor notifies the borrower within forty-five~~
2 ~~days following the date the payment was due that a late payment~~
3 ~~fee has been imposed for a particular late payment. A late~~
4 ~~payment fee that the creditor has collected shall be reimbursed~~
5 ~~if the borrower presents proof of having made a timely payment;~~
6 ~~and~~

7 ~~(5) a creditor shall treat each payment as~~
8 ~~posted on the same business day as it was received by the~~
9 ~~creditor, service, creditor's agent or at the address provided~~
10 ~~to the borrower by the creditor, service or the creditor's~~
11 ~~agent for making payments.~~

12 ~~N. No creditor shall make a high-cost home loan~~
13 ~~that contains a provision that permits the creditor, in its~~
14 ~~sole discretion, to accelerate the indebtedness, provided that~~
15 ~~this provision does not prohibit acceleration of a loan in good~~
16 ~~faith due to a borrower's failure to abide by the material~~
17 ~~terms of the loan.~~

18 ~~O. No creditor shall make a high-cost home loan~~
19 ~~that contains a provision that requires a penalty or premium~~
20 ~~for prepayment of the balance of the indebtedness.~~

21 ~~P.] E.~~ A creditor or mortgage loan originator shall
22 not make a high-cost home loan unless the creditor has given
23 the following notice, or a substantially similar notice, in
24 writing, to the borrower, acknowledged in writing and signed by
25 the borrower not later than the time the notice is required

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1 under the notice provision contained in 12 C.F.R. s.226.31(c):

2 NOTICE TO BORROWER

3 YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO
4 OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP
5 AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE
6 LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON
7 MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND
8 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY,
9 THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY
10 THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES
11 COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER
12 YOU SELECT.

13 IF YOU ACCEPT THE TERMS OF THIS LOAN, THE
14 CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME.
15 YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO
16 IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER
17 THE LOAN.

18 YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A
19 QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER
20 EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE,
21 FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU
22 PROCEED. A LIST OF QUALIFIED COUNSELORS IS
23 AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION
24 AND LICENSING DEPARTMENT.

25 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN

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1 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS
 2 DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION.
 3 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE
 4 ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE
 5 ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK
 6 YOUR CREDITOR ABOUT THESE SERVICES.

7 ALSO, YOUR PAYMENTS ON EXISTING DEBTS
 8 CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT
 9 ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO
 10 YOUR EXISTING CREDITORS."

11 Section 5. Section 58-21A-6 NMSA 1978 (being Laws 2003,
 12 Chapter 436, Section 6) is amended to read:

13 "58-21A-6. DEFAULT--NOTICE--RIGHT TO CURE.--

14 A. Before an action is filed to foreclose or
 15 collect money due pursuant to a home loan or before other
 16 action is taken to seize or transfer ownership of property
 17 subject to a home loan, the creditor or creditor's assignee of
 18 the loan shall deliver to the borrower a notice of the right to
 19 cure the default informing the borrower of:

20 (1) the nature of the default;

21 (2) the borrower's right to cure the default
 22 by paying the sum of money required, provided that a creditor
 23 or assignee shall accept any partial payment made or tendered
 24 in response to the notice. If the amount necessary to cure the
 25 default will change within thirty days of the notice, due to

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1 the application of a daily interest rate or the addition of
2 late fees, as allowed by the Home Loan Protection Act, the
3 notice shall give sufficient information to enable the borrower
4 to calculate the amount at any point within the thirty-day
5 period;

6 (3) the date by which the borrower may cure
7 the default to avoid a court action, acceleration and
8 initiation of foreclosure or other action to seize the
9 property, which date shall not be less than thirty days after
10 the date the notice is delivered, and the name and address and
11 telephone number of a person to whom the payment or tender
12 shall be made;

13 (4) that if the borrower does not cure the
14 default by the date specified, the creditor or assignee may
15 file an action for money due or take steps to terminate the
16 borrower's ownership in the property by requiring payment in
17 full of the home loan and commencing a foreclosure proceeding
18 or other action to seize the property; and

19 (5) the name and address and the telephone
20 number of a person whom the borrower may contact if the
21 borrower disagrees with the assertion that a default has
22 occurred or the correctness of the calculation of the amount
23 required to cure the default.

24 B. If a creditor or assignee asserts that grounds
25 for acceleration exist and requires the payment in full of all

1 sums secured by the home loan, the borrower, or anyone
2 authorized to act on the borrower's behalf, may, at any time
3 prior to the time title is transferred by means of foreclosure,
4 by judicial proceeding and sale or otherwise, cure the default,
5 and reinstate the home loan. Cure of the default shall
6 reinstate the borrower to the same position as if the default
7 had not occurred and shall nullify, as of the date of the cure,
8 an acceleration of any obligation under the home loan arising
9 from the default.

10 C. To cure a default under this section, a borrower
11 shall not be required to pay any charge, fee or penalty
12 attributable to the exercise of the right to cure a default,
13 other than the fees specifically allowed by this subsection.
14 The borrower shall not be liable for any attorney fees relating
15 to the default that are incurred by the creditor or assignee
16 prior to or during the thirty-day period set forth in
17 Subsection A of this section, nor for any such fees in excess
18 of one hundred dollars (\$100) that are incurred by the creditor
19 or assignee after the expiration of the thirty-day period but
20 prior to the time the creditor or assignee files a foreclosure
21 or other judicial action or takes other action to seize or
22 transfer ownership of the real estate. After the creditor or
23 assignee files a foreclosure or other judicial action or takes
24 other action to seize or transfer ownership of the real estate,
25 the borrower shall only be liable for attorney fees that are

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1 reasonable and actually incurred by the creditor or assignee,
2 based on a reasonable hourly rate and a reasonable number of
3 hours.

4 D. If a default is cured prior to the initiation of
5 any action to foreclose or to seize the residence, the creditor
6 or assignee shall not institute a proceeding or other action
7 for that default. If a default is cured after the initiation
8 of any action, the creditor or assignee shall take such steps
9 as are necessary to terminate the action.

10 E. A creditor or a creditor's assignee of a home
11 loan that has the legal right to foreclose shall, in a
12 foreclosure, use the judicial foreclosure procedures provided
13 by law. In such a proceeding, the borrower may assert the
14 nonexistence of a default and any other claim or defense to
15 acceleration and foreclosure, including any based on a
16 violation of the Home Loan Protection Act, though no such claim
17 or defense shall be deemed a compulsory counterclaim.

18 ~~[F. The provisions of this section apply only to~~
19 ~~home loans that were high-cost home loans at the time of~~
20 ~~origination.]"~~

21 Section 6. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.